

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Use of Portions of Returned 2 GHz Mobile)	IB Docket No. 05-220
Satellite Service Frequencies)	

COMMENTS

ICO Satellite Services G.P. (“ICO”) submits these comments in response to the Public Notice released on June 29, 2005, announcing the intent of the Federal Communications Commission (“FCC” or “Commission”) to modify the spectrum reservations of ICO and TMI Communications and Company Limited Partnership (“TMI”) pursuant to Section 316 of the Communications Act of 1934, as amended, so that each company will have access to at least 13.33 MHz of spectrum, or a third of the spectrum allocated to 2 GHz mobile satellite service (“MSS”).¹

ICO fully supports the Commission’s proposed modification of ICO’s and TMI’s 2 GHz spectrum reservations, provided that it is conditioned upon the outcome of the pending appeals of the 2 GHz MSS license cancellations. In fact, ICO previously submitted *ex parte* filings urging the Commission to divide returned 2 GHz MSS spectrum between the two remaining

¹ See Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-133 (June 29, 2005). Pursuant to a separate public notice, the Commission also is seeking comment on certain options for redistributing or reallocating the remaining one-third of the 2 GHz MSS spectrum allocation. See FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-134 (June 29, 2005).

licensees,² ICO and TMI, and ICO requests that these filings be incorporated by reference into this proceeding.³

The proposed modification will facilitate ICO's and TMI's access to sufficient spectrum to support deployment of viable MSS systems that will offer tremendous benefits to the public. Ensuring adequate access to 2 GHz MSS spectrum is particularly crucial for homeland security and emergency response providers, which rely on commercial MSS offerings. As the Satellite Industry Association noted, "[h]omeland security interests are using commercial satellites for critical activities such as direct and back-up communications, emergency response services, continuity of operations during emergencies, military support, and intelligence gathering."⁴ In fact, the 2004 National Security Telecommunications Advisory Committee Satellite Task Force Report to the President found that the commercial satellite industry is critical to national, economic, and homeland security.⁵ The Commission also has acknowledged repeatedly that MSS systems are uniquely capable of serving the needs of homeland security and emergency response providers.⁶

² For ease of reference, the terms "licenses" and "licensees," with respect to 2 GHz MSS, will refer to FCC authorizations to provide 2 GHz MSS and the parties that hold those authorizations, regardless of whether the authorization is a U.S. satellite license or a letter of intent authorization granting a reservation of spectrum to a foreign-licensed satellite system.

³ See Letter from Suzanne Hutchings Malloy, ICO, to Donald Abelson, Chief, Int'l Bur., FCC, Dkt. Nos. 02-34 & 02-248 (May 3, 2005); Letter from Suzanne Hutchings Malloy, ICO, to Marlene H. Dortch, Sec'y, FCC, Dkt. Nos. 99-81 & 02-34 (June 7, 2005).

⁴ Comments of the SIA at 7, WT Dkt. No. 05-157 (Apr. 28, 2005) (footnotes omitted).

⁵ *Id.*

⁶ See, e.g., *Flexibility for Delivery of Communications by Mobile Satellite Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962, 1978 ¶ 28 (2003) (MSS systems "permit law-enforcement, aid agencies and the public to communicate from remote locations on the land, on the sea or in the air through a single telephone number"); *Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower* Footnote continues...

Furthermore, the Commission has ample authority under Section 316(a) of the Communications Act of 1934, as amended, to modify “[a]ny station license or construction permit ... if, in the judgment of the Commission such action will promote the public interest, convenience, and necessity.”⁷ The modification procedures under Section 316 do not require a rulemaking proceeding, but rather an adjudicatory hearing that allows only the “holder of the license or permit” and “[a]ny other licensee or permittee who believes its license or permit would be modified” to challenge the proposed modification.⁸

Contrary to the contention of CTIA – The Wireless Association (“CTIA”),⁹ the Commission is not required by its precedent to seek comment on the possibility of a wholesale reallocation of returned 2 GHz MSS spectrum. For countless other satellite or wireless services, the Commission does not routinely consider reallocating spectrum to new services each time a

L-band, Notice of Proposed Rulemaking, 11 FCC Rcd 11675, ¶ 12 (1996) (satellites “provide emergency communications to any area in times of emergencies and natural disasters”); Remarks of FCC Commissioner Michael J. Copps, SIA/SBCA Folger Library Dinner (Mar. 22, 2005) (“Over 80% of federal agencies are using satellites to communicate, from FEMA to the Coast Guard to our customs and border control agents. With satellites, our communications infrastructure is more resilient and more difficult to undermine.”).

⁷ 47 U.S.C. § 316(a).

⁸ 47 U.S.C. § 316(a)(1), (2). *See Western Broadcasting Co. v. FCC*, 674 F.2d 44, 53 (D.C. Cir. 1982) (“in enacting section 316, Congress made explicit the right of a license holder to show cause “by public hearing” why an order of modification should not issue”). Furthermore, the proposed modification is consistent with Section 25.157(g) of the Commission’s rules, which generally requires the Commission to redistribute returned satellite spectrum equally among the remaining licensees in the frequency band. *See* 47 C.F.R. § 25.157(g); *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶¶ 61-64 (2003). This redistribution requirement applies to 2 GHz MSS and other “NGSO-like” services, without exception. By immediately redistributing one-third of the 2 GHz MSS spectrum allocation to ICO and TMI each, the Commission will achieve the result required under Section 25.157(g) following the surrender of 2 GHz MSS spectrum by Iridium LLC and The Boeing Company.

⁹ *See* Letter from Diane Cornell, CTIA – The Wireless Association™, to Marlene H. Dortch, Sec’y, FCC (July 1, 2005) (“CTIA Letter”).

license is returned or canceled. For example, the Commission permits spectrum that has been abandoned by second-round licensees in the non-voice, non-geostationary MSS (“Little LEO”) to be redistributed to the remaining licensees, rather than reallocated to other services.¹⁰

Additionally, when Starsys Global Positioning, a first-round Little LEO licensee surrendered its license in 1997, the Commission did not consider reallocating the returned spectrum for other services, but rather preserved the spectrum for Little LEO services.¹¹

Furthermore, contrary to CTIA’s claim,¹² the Commission’s proceedings regarding MSS in the L-band and S-band (“Big LEO”) do not support an immediate, wholesale reallocation of returned MSS spectrum. In those proceedings, the Commission initially designated a total of 27.85 MHz of spectrum for shared use by up to four Big LEO systems using code division multiple access (“CDMA”) technology, and a total of 5.15 MHz of spectrum for exclusive use by a single Big LEO system using time division multiple access (“TDMA”) technology. Beginning in 1995, the Commission granted licenses for four CDMA Big LEO systems and for a single TDMA Big LEO system.¹³ In 1998, one of the four licenses for CDMA Big LEO systems was returned to the Commission; and in 2001 and 2002, two additional CDMA licenses were canceled.¹⁴ Rather than immediately redistributing or reallocating the returned Big LEO

¹⁰ See *Amendment of Part 25 of the Commission’s Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service*, 13 FCC Rcd 9111, ¶¶ 30, 34.

¹¹ *Id.* ¶ 25.

¹² See CTIA Letter, Attachment, at 5.

¹³ See *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, 19 FCC Rcd 13356, ¶ 19 (2004) (“*Big LEO Order*”).

¹⁴ See FCC Public Notice, *Satellite Policy Branch Information; Satellite Applications Accepted for Filing*, Report No. SPB-114 (Jan. 15, 1998); *Mobile Communications Holdings, Inc.*, 16 FCC Footnote continues...

spectrum, the Commission allowed the remaining CDMA Big LEO licensee ample time to make full use of the spectrum. In fact, the Commission did not initiate a rulemaking to consider redistributing or reallocating the spectrum until five years after the first CDMA Big LEO license was returned.¹⁵ Similarly, the Commission should allow ICO and TMI an opportunity to implement their business plans and make full use of the available spectrum before considering any proposal to restrict their spectrum access. The proposed assignment of at least 13.33 MHz of spectrum to ICO and TMI each will provide regulatory certainty and facilitate their ability to attract capital investment and execute their business plans.

Rcd 11766 (IB 2001), *aff'd*, 17 FCC Rcd 11898 (IB 2002), *aff'd*, 18 FCC Rcd 11650 (2003); *Constellation Communications Holdings, Inc.*, 17 FCC Rcd 22584 (IB 2002), *aff'd*, 18 FCC Rcd 18822 (2003).

¹⁵ See *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003). The Commission ultimately did not reallocate any Big LEO spectrum for exclusive use by other services. Rather, the Commission revised the Big LEO band plan to (1) allow both CDMA and TDMA MSS operators to share certain frequencies; and (2) allocate certain other frequencies for fixed and mobile services (except aeronautical mobile) on a shared basis with CDMA MSS. See *Big LEO Order*, ¶ 1. Consequently, the Big LEO proceedings do not offer any precedent requiring the Commission to consider further reducing the amount of spectrum allocated for 2 GHz MSS.

Based upon the foregoing, the Commission immediately should modify ICO's and TMI's 2 GHz spectrum reservations to allow each party to access at least 13.33 MHz of spectrum, subject to the outcome of the pending appeals of the 2 GHz MSS license cancellations.

Respectfully submitted,

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July 13, 2005

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2005, a copy of the foregoing **COMMENTS** was served by electronic mail, upon the following:

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